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In re Application of:
Shigeki Obayashi
Serial No.: 09/829,046
Filed: April 10, 2001
Attorney Docket No.: **57454-072**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed August 22, 2003, for reconsideration of holding of abandonment. The petition has been treated as a petition to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181. No petition fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the required issue fee in response to the Notice of Allowance and Issue Fee Due (Notice) mailed on November 28, 2001. A Notice of Abandonment was mailed on May 01, 2002.

Petitioner asserts that the Notice mailed on November 28, 2001, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received and a copy of the file docket where the Office action would have been entered.

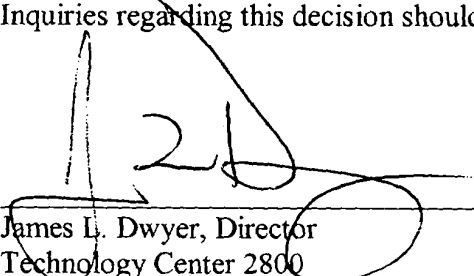
A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition, including the attachments, is sufficient to establish a showing of non-receipt of the Notice mailed November 28, 2001.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Notice of Allowability and the Notice of Allowance and Issue Fee Due. The shortened statutory period for response will be reset to run from the date the Notices are re-mailed. Extensions of time are not available under 37 C.F.R. § 1.136.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.



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